

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TOM P. DIABO

Plaintiff

v.

Civil Action No. 5:17-cv-1169 (GTS/TWD)
HILLCREST DAVIDSON AND ASSOCIATES, LLC

Defendant

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, by and through his counsel, Selbach Law Offices, P.C., complaining of the Defendant, respectfully alleges as follows:

I. INTRODUCTION

1. This is an action for actual and statutory damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et. seq.* (hereinafter "FDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION

2. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28 U.S.C. §1337.

III. PARTIES

3. Plaintiff is a natural person residing in the County of Onondaga and State of New York.
4. Upon information and belief, Hillcrest Davidson and Associates, LLC ("HDA") is a corporation organized and existing under the laws of the Texas and transacts business or contracts to supply services in New York with its principal place of business located at 715 N Glenville Drive, Suite

450, Richardson, TX 75081. The causes of action stated herein arise from the said jurisdictional acts.

5. Upon information and belief, the principal purposes of HDA is the collection of debts using the mails and telephone, and HDA regularly attempts to collect debts alleged to be due another.

IV. FACTUAL ALLEGATIONS

6. The Plaintiff filed a bankruptcy case with the United States Bankruptcy Court for the Northern District of New York on March 20, 2017. Case No. 17-30356 was assigned. The Plaintiff received a discharge from the Bankruptcy Court on June 26, 2017.
7. The said discharge discharged the Plaintiff from all liability on a debt owed to SAFE Security, Inc. (“the Debt”).
8. The Defendant mailed to the Plaintiff a written demand to pay the Debt, a copy of which is attached hereto as Exhibit A.

V. CLAIM FOR RELIEF

9. The foregoing allegations are repeated, realleged and incorporated by reference herein.
10. Defendant, by reason of the aforesaid conduct, violated the FDCPA.
11. Defendant, in violation of 15 U.S.C. §1692e(2)(A), sent a document which contained a false representation as to the character, amount, or legal status of the debt, i.e., that the Plaintiff owed the debt, which was false as the debt had been discharged in a bankruptcy case.
12. Defendant, in violation of 15 U.S.C. §1692e(2)(A), by sent a document which contained a false representation as to the character, amount, or legal status of the debt, i.e., that the Plaintiff was required to pay the debt, which was false as the debt had been discharged in a bankruptcy case.
13. The aforesaid conduct has caused the Plaintiff severe stress and aggravation.
14. As a result of the aforesaid violations of the FDCPA, the Plaintiff suffered actual damages,

including emotional distress. In addition, an award of statutory damages, costs and attorneys' fees is warranted and appropriate.

WHEREFORE, Plaintiffs respectfully request that judgment be entered against the Defendant for:

- (a) actual damages;
- (b) statutory damages pursuant to 15 U.S.C. §1692k;
- (c) costs and reasonable attorneys' fees pursuant to 15 U.S.C. §1692k;
- (d) for such other and further relief as may be just and proper.

A JURY TRIAL IS DEMANDED

DATED: Syracuse, New York
October 19, 2017

SELBACH LAW OFFICES, P.C.

By: /s/James F. Selbach, Esq.

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